;NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

A & C Healthcare Services, Inc. and Service Employees International Union, United Healthcare Workers—West. Cases 20–CA–33588 and 20–CA–33780

February 25, 2011 DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE AND HAYES

On June 8, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 33. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained.

On September 29, 2010, the Acting General Counsel requested, in view of the Court's decision in New Process Steel, that a duly constituted Board review this case on the grounds that the Union has filed a new charge in Case 20-CA-35111 alleging that during the 6 months prior to the filing of that charge the Respondent failed and refused to bargain in good faith with the Union and made unilateral changes to terms and conditions of employment. Since the bad-faith bargaining allegation in the new charge is premised on a bargaining obligation, and there is no definitive Board Order establishing that such a bargaining obligation exists, the Acting General Counsel states that "[i]n order for the Region to determine the merits of the bad-faith bargaining allegation in [C]ase 20–CA–35111, it is necessary as a predicate [for] the Board to determine whether Respondent has a duty to bargain with the Union, as alleged by the complaint and found in the ALJD, in Cases 20-CA-33588 and 20-CA-33780." The Acting General Counsel also states that for the Region to determine the merits of the new bad-faith bargaining allegation, it must consider "the totality of circumstances surrounding the current negotiations between the parties, including Respondent's prior conduct as described in the ALJD in Cases 20-CA-33588 and

20-CA-33780." The Acting General Counsel's motion is unopposed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.²

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 354 NLRB No. 33 (2009), which is incorporated by reference.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified in 354 NLRB No. 33 and orders that the Respondent, A & C Healthcare Services, Inc., Millbrae, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Dated, Washington, D.C. February 25, 2011

Wilma B. Liebman,	Chairman
Mark Gaston Pearce,	Member
Brian E. Hayes,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

² Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the remaining member who participated in the original decision. Member Becker is recused and did not participate in the consideration of this case.

³ Chairman Liebman joins in this decision granting the Acting General Counsel's motion solely because it is unopposed. Member Hayes agrees with the position taken by former Member Schaumber that, because it makes no difference in this case whether the Respondent was a "perfectly clear" successor, there is no need to pass on the judge's observations about whether there should be an exception for such a successor who elects to acquire a business through a bankruptcy auction